

U.S. Department of Labor
Occupational Safety and Health Administration
Region VI **Baton Rouge Area Office**



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EVIDENCE AND SITE CONTROL AGREEMENT

The parties to this Evidence and Site Control Agreement ("Agreement") shall be KMT Constructors ("KMT" or "Employer") and the Occupational Safety and Health Administration ("OSHA"), referred to collectively as the "Parties."

OSHA is conducting an investigation of the Huey P Long Bridge incident that occurred at the construction site located at or near the Huey P Long Bridge in Bridge City, LA, on or about June 12, 2009. As part of its investigation, potentially relevant evidence will need to be secured, removed and/or stored. KMT and OSHA have identified and continue to identify potential items of evidence. The intention is to secure and remove these items in order to preserve the evidence while OSHA and KMT conduct their on-going investigations.

The purpose of this Agreement shall be to ensure that the Parties: (1) have the opportunity to access the physical evidence and accident site itself in its original condition and (2) agree in advance to an orderly effort by which evidence will be collected, stored and preserved for additional documentation, testing and/or analysis.

This Agreement shall not be construed, either expressly or impliedly, to limit the lawful authority of OSHA or the U.S. Government to conduct a full and thorough investigation as authorized through the respective enabling legislations or other authority.

Terms and Conditions

The Parties mutually understand and agree as follows:

A. Site Preservation

1. Other than as provided elsewhere in this Agreement, or unless subsequently agreed to in writing by the Parties to this Agreement, the Parties shall not move, alter, destroy, rearrange, or otherwise tamper with any evidence that has potential relevance to the Parties' investigations, including but not limited to, the EBB-W2 "East Bank Bound-Work Package 2" column and the corresponding 12 concrete anchor blocks, guy wires, pulleys, and clamps involved in the incident.

2. In the event that it is necessary for KMT to move, alter or rearrange any physical object involved in the incident in order to eliminate an environmental, health or safety condition which presents an imminent hazard, it shall give the OSHA Baton Rouge Area Office at least twenty-four (24) hours notice and shall offer OSHA the opportunity to document the affected area, unless said delay in addressing the imminent hazard could reasonably be expected to cause serious harm to life, property or the environment. Such notification to OSHA will be at a reasonable time and afford OSHA the opportunity to arrive at the site during normal business hours and business days to observe the evidence prior to movement, alteration or rearranging.

56
EXHIBIT Q

B. Evidence Collection & Storage

1. All Parties will have an opportunity to identify and request items they wish to be retained in accordance with the following Evidence Selection and Securing Protocol. Once an item or piece of equipment is identified:

a. If possible, the evidence will be identified and documented undisturbed in place.

b. When an item is identified, if possible, it will be photographed in its "as is" state without tags.

c. Close up photographs will be taken to include distinguishing features and size scales.

d. An identification tag will be affixed to the item. The tag will be numbered. The item will be recorded in an "evidence log" that will contain information regarding the date and time, tag number and description of the item.

e. If a tagged item is not attached to another piece of equipment and can be easily removed, it will be removed from the incident area and transported to the storage area(s).

f. If a tagged item is attached to another piece of equipment and cannot be easily removed, the dismantling process will be photographed.

g. Before any item is removed and transported from the incident area to the storage area, it will be photographed and documented.

h. Transfer of evidence. If any items of evidence are transferred from secure storage, a chain of custody form will be completed, which will include:

- i. Item number
- ii. Description of item
- iii. Destination
- iv. Analysis planned, if applicable
- v. Name, date, time and signature of person relinquishing item
- vi. Name, date, time and signature of person receiving item

2. OSHA may gather and store evidence itself and/or may also have evidence transported to and secured in a storage area(s) on the grounds of the KMTC's Bridge City, LA facility. Any evidence stored by KMTC will be kept within a locked and/or secured area with limited access to this area until so notified by OSHA that it no longer requires said objects to be secured. KMTC and OSHA will control access to the storage area. Access by anyone to the physical evidence in this case shall be documented in an "evidence control log," annotating each individual who accessed the evidence, the evidence accessed by each individual, the purpose of each visit and the duration of each visit.

3. KMTC shall keep and maintain the evidence log and evidence control log and shall provide them to OSHA upon request. ~~KMTC~~ ^{OSHA} shall timely inform OSHA's Baton Rouge Area Office by facsimile, within 24 hours if reasonable, of entries to the logs.

C. Samples and Sampling

1. The Parties may take relevant samples, as they deem necessary and appropriate, in furtherance of their respective investigations. If the Parties determine that the available amount of a particular material is insufficient to allow a split sample and testing by multiple parties, all Parties shall be notified and a joint sampling and testing protocol will be developed for that particular material.

2. A Party conducting non-destructive testing shall give reasonable notice to the other Party of such testing so that all Parties who desire to be present may have the opportunity to do so.

57

D. Document Preservation

1. KMTC shall preserve all documents existing at the time of the accident which pertain to the incident of June 12, 2009, and the same shall not be altered, destroyed or removed from the premises without OSHA's consent.

E. Summary

1. Any terms or conditions contained within this Agreement apply to the Parties themselves, as well as their officers, employees, agents, attorneys, contractors, successors in interest, and subrogees, as well as all such personnel employed by any other related business entities, including but not limited to parent companies, holding companies, subsidiaries, and business partners of any sort.

2. This Agreement shall remain in effect until such time as OSHA terminates its investigation of the incident, the parties mutually agree that it is no longer necessary, or until a party gives written notice to all other Parties that it no longer intends to be bound by such Agreement. This Agreement cannot be changed, modified, or supplemented except as mutually agreed in writing by the Parties hereto.

3. This Agreement constitutes the entire agreement between KMTC and OSHA and merges any and all prior discussions and negotiations. Any prior understandings or representations of any kind preceding the date of this Agreement shall not be binding on any party except as incorporated in this Agreement itself. Specifically, KMTC and OSHA, through their respective authorized signatories, each acknowledge that it is not relying on any promises, oral or written, other than those terms and conditions contained in this Agreement.

Executed on this the 17th day of June, 2009.


KMTC Constructors


Occupational Safety and Health Administration

58